

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

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FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

TWINSBURG APARTMENTS, INC.,)

Plaintiff,)

-vs-)

THE AKRON METROPOLITAN
HOUSING AUTHORITY,)

Defendant.)

CASE NO.

JUDGE

5:04 CV 2173

MAG. JUDGE LIMBERT

NOTICE OF REMOVAL

TO THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO:

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant The Akron Metropolitan Housing Authority ("AMHA") hereby provides notice of the removal of the above-captioned civil action from the Court of Common Pleas for Summit County, Ohio. In support of this Notice of Removal, Defendant states as follows:

1. This civil action was originally filed on September 27, 2004, by Plaintiff Twinsburg Apartments, Inc. in the Court of Common Pleas of Summit County, Ohio, under the caption *Twinsburg Apartments, Inc. v. The Akron Metropolitan Housing Authority*, Case No. CV 2004-09-5353. Service was accomplished upon Defendant AMHA on October 4, 2004.

2. This notice of removal was timely filed under 28 U.S.C. § 1446(b) as it was filed within 30 days after service of Plaintiff's Complaint upon Defendant.

3. This Court has federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 for the following reasons:

a. The contract upon which Plaintiff bases its claim is one that was authorized under the United States Housing Act of 1937, 42 U.S.C. § 1437, *et seq.*, specifically 42 U.S.C. § 1437f, and the Department of Housing and Urban Development Act, 42 U.S.C. § 3531, *et seq.* Plaintiff claims that Defendant has breached said contract because Defendant has followed the mandate and strictures of amendments to the United States Housing Act of 1937, including amendments to 42 U.S.C. § 1437f(c)(2)(A), which limited adjustments of rents under Housing Assistance Payment contracts. Plaintiff presents the federal question as to whether Defendant is required under law to follow the Congressional mandate set out therein.

b. In addition, Plaintiff claims that Defendant has breached the contract at issue by virtue of its having followed the mandate of Housing and Urban Development Directive 95-12, purportedly enacted to implement the above-described amendments. Plaintiff presents the federal question as to whether Defendant is required to abide by the stated Housing and Urban Development Directive.

c. Further, because any funds paid to Plaintiff are paid not by Defendant but by the United States in the form of the U.S. Department of Housing and Urban Development, Defendant presents the federal question as to whether the claims for compensation presented in Plaintiff's Complaint are contrary to the Federal Anti-Deficiency Act, 31 U.S.C. § 1341, *et seq.*, in that the Congress of the United States did not appropriate funds to make payments to Plaintiff as demanded.

4. A copy of all filings in the Court of Common Pleas are attached hereto as required by law.
5. A true and correct copy of this Notice of Removal shall be filed with the Clerk of Court for the Summit County Court of Common Pleas as provided by law.
6. Written notice of the filing of this Notice shall also be provided to counsel of record for the Plaintiff as provided by law.

WHEREFORE, Defendant AMHA hereby provides notice that the above-captioned civil action now pending in the Court of Common Pleas for Summit County, Ohio, shall be removed to this Court under 28 U.S.C. §§ 1441 and 1446.

Dated: November 1, 2004

Respectfully submitted,



Ronald S. Kopp – 0004950

Stephen W. Funk – 0058506

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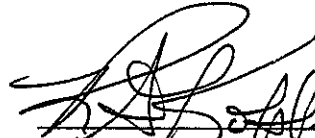
Suite 900

Washington, D.C. 20005-3992

Telephone: (202) 783-2800

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Notice of Removal has been served by regular U.S. mail, postage prepaid, this 1st of November, 2004, upon Fred J. Livingstone, Mark J. Valponi and Majeed G. Makhoul, Attorneys for Plaintiff, at Taft, Stettinius & Hollister LLP, 3500 BP Tower, 200 Public Square, Cleveland, Ohio 44114-2302.



Ronald S. Kopp

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